

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

MONARCH GREENBACK L.L.C.,
THE VIRGINIA BURROUGHS DAVISON)
TRUST, THE BARBARA BURROUGHS)
KNIPE TRUST, THE A.H.)
BURROUGHS, III TRUST, AND THE)
DOE RUN RESOURCES)
CORPORATION)

Defendants.

CIVIL ACTION NO.: CV 02-436-S-EJL

CONSENT DECREE
WITH THE ARTICLE 5 TRUSTS, A.H. BURROUGHS, III,
KAREN WEAVER ECCLES AND O.H. DAVISON

CONSENT DECREE

I. BACKGROUND

A. The United States of America (United States), on behalf of the Administrator of the United States Environmental Protection Agency (EPA), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (CERCLA), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Talache Mine Tailings Superfund Site near Atlanta, Idaho (the Site).

B. On January 16, 1996, the Article 5 Trusts transferred to Monarch Greenback, LLC, their ownership interest in property at the Site.

C. The defendants that have entered into this Consent Decree (Settling Defendants) do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

D. The United States acknowledges that, based on information available as of the signing of this Consent Decree, it has no basis to allege that:

- (1) The individual trustees have at any time since 1969 acted outside the scope of their fiduciary duty as Trustees of the Article 5 Trusts;
- (2) The individual trustees have acted as operators, generators, transporters or arranged for disposal as defined in CERCLA;
- (3) The managers of Monarch Greenback LLC have acted at any time since the creation of Monarch outside the scope of and course of their capacity as a manager;
- (4) The managers of Monarch Greenback LLC have acted as operators, generators, transporters or arranged for disposal as defined in CERCLA at any time since the creation of Monarch.

E. The Complaint filed by the United States is hereby amended pursuant to FRCP 15(a) by consent of the parties hereto to add as defendants, A.H. Burroughs, III, Karen Weaver Eccles, and O.H. Davison, and to add a claim pursuant to Section 309 of the Clean Water Act seeking civil penalties and injunctive relief for the unlawful discharge of pollutants into the navigable waters of the United States. Said amendments relate back to the time of the United States pleading of the Complaint and the Complaint is conformed to the amendments.

F. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 33 U.S.C. § 3319(b), and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants present in the Tailings Impoundments or Depositional Area of the Site as of the effective date of this Consent Decree and as identified in the following documents: (1) MFG, Inc. May 2003. Construction Completion Report, Depositional Area, Talache Mine Tailings Site, Atlanta, Idaho. Prepared for the St. Joe Minerals Corporation and Monarch Greenback, LLC; (2) MFG, Inc. March 2003. Construction Completion Report, Tailings Pile Area, Talache Mine Tailings Site, Atlanta, Idaho. Prepared for the St. Joe Minerals Corporation and Monarch Greenback, LLC; (3) MFG, Inc. (MFG 2001). Final Baseline Human Health Risk Assessment for the Depositional Area (Revised). Prepared for the St. Joe Minerals Corporation, February 2001; (4) MFG, Inc. December 2000. Final Engineering Evaluation/Cost Analysis, Depositional

Area, Talache Mine Tailings Site, Atlanta, Idaho. Prepared for the St. Joe Minerals Corporation and Monarch Greenback, LLC; (5) MFG, Inc. Terracon, and Pentec Environmental. March 2000. Final Site Characterization Report, Talache Mine Tailings Site, Atlanta, Idaho. Prepared for St. Joe Minerals Corporation and Monarch Greenback, LLC.

h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and the Settling Defendants.

j. "AOC Oversight Costs" shall mean those costs that EPA incurs after the date this Consent Decree is entered by the Court in monitoring and supervising compliance with the two Administrative Orders on Consent (AOCs) referenced in this subparagraph to determine compliance with those AOCs, including costs incurred in reviewing plans, reports and other documents submitted pursuant to the AOCs, as well as costs incurred in overseeing implementation of the work. However, AOC Oversight Costs do not include, *inter alia*: the costs incurred by the United States to obtain access, to conduct future response actions, or to enforce the terms of the AOCs or this Consent Decree including all costs incurred in connection with dispute resolution under the AOCs and all litigation costs. The two AOCs are: (A) In the Matter of: Talache Mine Tailings Superfund Site, Atlanta, Idaho, Administrative Order on Consent for Removal Action, Docket No. CERCLA-10-2000-0151 (June 14, 2000); and (B) In the Matter of: Talache Mine Tailings Superfund Site, Atlanta, Idaho, Administrative Order on Consent for Removal Action, Docket No. CERCLA-10-2001-0166 (June 17, 2002).

k. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA, USFS or DOJ on behalf of EPA or USFS has paid at or in connection with the Site through the date this Consent Decree is entered by the Court, plus accrued Interest on all such costs through such date.

l. "Plaintiff" shall mean the United States.

m. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

n. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

o. "Settling Defendants" shall mean the Virginia Burroughs Davison Trust, the Barbara Burroughs Knipe Trust, the A.H. Burroughs, III Trust (also known collectively as the "Article 5 Trusts Under Last Will and Testament of A.H. Burroughs, Jr." or the "Article 5 Trusts"), A.H. Burroughs, III, Karen Weaver Eccles, and O.H. Davison.

p. "Site" shall mean the Talache Mine Tailings Superfund Site, and shall include all lands upon which any hazardous substances, pollutants, or contaminants from the Tailings

Impoundments have been released, and all surface water and ground water bodies within which any hazardous substances, pollutants, or contaminants from the Tailings Impoundments have come to be located. The Site is estimated to encompass approximately eighty (80) acres as well as those areas of the Middle Fork of the Boise River and related tributaries where tailings released from the Tailings Impoundments have come to be located. The Site is located near Atlanta, Idaho, and approximately within Township 5 North, Range 11 East of the Boise Meridian. The Site shall also include the areal extent of contamination and all suitable areas in close proximity to the contamination necessary for implementation of the response action. Portions of the Site include lands under the custody, jurisdiction and control of the Forest Service. The Site is identified in the attached map which is Appendix A to this Consent Decree.

q. "Tailings Impoundments" shall mean the upper tailings impoundment and lower tailings impoundment within the Site. The Tailings Impoundments are identified in the attached map, which is Appendix A to this Consent Decree.

r. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

s. "USFS" shall mean the United States Forest Service and any successor departments, agencies or instrumentalities of the United States.

V. PAYMENT OF RESPONSE COSTS

4. Within 60 days of entry of this Consent Decree, the Article 5 Trusts shall pay to the EPA \$5,000.

5. Payment shall be made by certified check or checks or cashier's check or checks made payable to "U.S. Department of Justice," referencing the name and address of the party making payment, the EPA Region and Site Spill ID Number 106C, and DOJ Case Number 90-11-3-128L. Settling Defendants shall send the check to:

United States Attorney's Office, District of Idaho,
Attention Financial Litigation Unit,
MK Plaza, Plaza IV,
800 Park Boulevard, Suite 600,
Boise, ID, 83712-9903

6. At the time of payment, the Article 5 Trusts shall send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 106C, DOJ case number 90-5-1-1-4541/1, and the civil action number.

7. The total amount to be paid pursuant to Paragraph 4 shall be deposited in the Talache Mining District Special Account within the EPA Hazardous Substance Superfund to be retained

and used to conduct or finance response actions at or in connection with the Talache Mining District, or to be transferred to the EPA Hazardous Substance Superfund

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments. If the Article 5 Trusts fail to make the payment under Paragraph 4 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. Stipulated Penalty.

a. If the amount due under Paragraph 4 is not paid by the required due date, the Article 5 Trusts shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the interest required by Paragraph 9, \$1,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number 106C, and DOJ Case Number 90-5-1-1-4541/1, and shall be sent to:

Mellon Bank
EPA Region 10 Superfund
PO Box 3711099M
Pittsburgh, PA 15251

c. At the time of each payment, the Article 5 Trusts shall send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified the Article 5 Trusts of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce Section V of this Consent Decree (Payment of Response Costs) the Article 5 Trusts shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time. If the United States brings an action to enforce any other provision of this Consent Decree, the Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of the Article 5 Trusts failure to comply with the requirements of Section V of this Consent Decree (Payment of Response Costs). Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with any other requirement of this Consent Decree.

12. The obligations of the Article 5 Trusts to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one Article 5 Trust to make the payments required under this Consent Decree, the remaining Article 5 Trusts shall be responsible for such payments.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse the Article 5 Trusts from payment as required by Section V or from performance of any other requirements of this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

14. CERCLA Covenant Not to Sue by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) with regard to Past Response Costs, AOC Oversight Costs, or Existing Contamination at the Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

15. Clean Water Act Covenant Not to Sue by United States. In consideration of the payment by the Article 5 Trusts and the Covenant Not to Sue by Settling Defendants, EPA releases all civil claims against and covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 309 of the Clean Water Act, 33 U.S.C. 1319, for injunctive relief and civil penalties arising from the Site and from the discharges referenced in Appendix B hereto through the Effective Date of this Consent Decree. This covenant not to sue

shall take effect upon receipt by EPA of all payments required by Section V (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

16. Natural Resources Covenant Not to Sue by United States. The Federal Trustees have determined that the payment to be made pursuant to this Consent Decree is an appropriate amount to protect and restore the natural resources damaged by the release of hazardous substances from the Talache Mine Tailings Superfund Site as a result of the May, 1997 tailings impoundment failure alleged in the complaint in this lawsuit and that the payment satisfies the requirements of Section 122(j)(2) of CERCLA, 42 U.S.C. § 9622(j)(2).

17. Dismissal of Complaint. Within 60 days of receipt of the amount identified in Paragraph 4 the United States shall dismiss its complaint against the Article 5 Trusts and the individuals with prejudice.

VIII. RESERVATION OF RIGHTS BY UNITED STATES

18. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Section VII of this Consent Decree (Covenant Not to Sue by Plaintiff). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of a Settling Defendant to meet one of their respective requirements under this Consent Decree;
- b. criminal liability;
- c. liability for costs incurred or to be incurred by the United States other than Past Response Costs, AOC Oversight Costs, or costs arising from Existing Contamination
- d. liability resulting from conduct by the Settling Defendants, their successors, or assignees that exacerbates Existing Contamination;
- e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or from the Site after the effective date of this Consent Decree, not within the definition of Existing Contamination;
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;

g. liability arising from discharges from the Site and from point sources identified in Appendix B occurring after the effective date of this Consent Decree.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

19. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 21 (Waiver of Claims) and Paragraph 25 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 18 (c) - (e), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

21. Settling Defendants agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

22. Except as provided in Paragraph 21, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 21, the Parties expressly reserve any and all rights (including, but not

limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

23. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs, AOC Oversight Costs, Existing Contamination at the Site and natural resources damages resulting from the May, 1997 tailings impoundment failure alleged in the complaint in this lawsuit. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

24. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

25. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

26. The participation of A.H. Burroughs, III, Karen Weaver Eccles and OH Davison in this Consent Decree in their individual capacity shall not be construed or alleged to be a guaranty of the Article 5 Trusts' obligations under this Consent Decree.

XI. RETENTION OF RECORDS

27. Until 10 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

28. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

29. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. NOTICES AND SUBMISSIONS

30. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-5-1-1-4541/1)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Director, Environmental Cleanup Office
United States Environmental Protection Agency
Region 10
ECL - 113
1200 Sixth Avenue
Seattle, Washington 98101

Dave Tomten
On-Scene Coordinator
U.S. EPA Idaho Operations Office
1435 N. Orchard
Boise, Idaho 83706

Diane Norton
Office of Management Programs
U.S. Environmental Protection Agency
OMP-146
1200 Sixth Avenue
Seattle, Washington 98101

As to Settling Defendants:

A.H. Burroughs, III
1617 Claremont Drive
Boise, ID 83702

Karen Knipe Weaver
2718 Augusta
Boise, ID 83705

O.H. Davison
55 Iroquois Trail
Portola Valley, CA 94025

Gary D. Babbitt, Esq.
Hawley Troxell
877 Main Street, Suite 1000
Boise, ID 83701

XIII. RETENTION OF JURISDICTION

31. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. INTEGRATION/APPENDICES

32. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the map of the Site;

“Appendix B” identifies the discharge points referenced in Paragraph 15.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

33. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

34. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. SIGNATORIES/SERVICE

35. Each undersigned representative of a Settling Defendant to this Consent Decree and the Deputy Chief for the Environmental Enforcement Section of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

36. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

37. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XVII. FINAL JUDGMENT

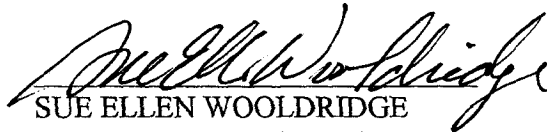
38. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 200__.

United States District Judge

FOR THE UNITED STATES OF AMERICA

Date: 3.10.06



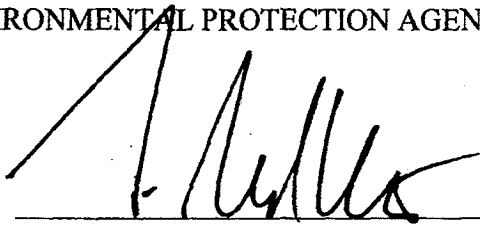
SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Date: 2/9/2006



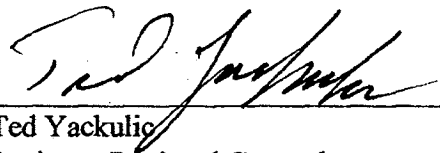
Paul Gormley
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
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Washington, D.C. 20044-7611

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



L. Michael Bogert
Regional Administrator
Region 10
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101

Granta Y. Nakayama
Assistant Administrator
Office of Environmental Compliance and Assurance
U.S. Environmental Protection Agency
Washington DC



Ted Yackulic
Assistant Regional Counsel
U.S. Environmental Protection Agency
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Seattle, WA 98101

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

L. Michael Bogert
Regional Administrator
Region 10
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101


Mark
Pollins for

12/14/05

Granta Y. Nakayama
Assistant Administrator
Office of Environmental Compliance and Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, Suite
Washington, D.C. 20460

Ted Yackulic
Assistant Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101

FOR THE UNITED STATES FOREST SERVICE

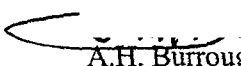


Jack Troyer, Regional Forester
U.S. Department of Agriculture - Forest Service
Region IV
Federal Building
324 25th Street
Ogden, UT 84401

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Monarch Greenback, et al., CV 02-436-S-EJL, relating to the Talache Mine Tailings Superfund Site.

THE A.H. BURROUGHS, III TRUST

Date: 9/24


A.H. Burroughs III, Trustee
1617 Claremont Drive
Boise, ID 83702

Date: _____

Karen Knipe Weaver, Trustee
2718 Augusta
Boise, ID 83705

Date: _____

O.H. Davison, Trustee
55 Iroquois Trail
Portola Valley, CA 94025

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Gary D. Babbitt, esq.
Hawley Troxell Ennis and Hawley
877 Main Street, Suite 1000
Boise, ID 83701

THE A.H. BURROUGHS, III TRUST

TEE

O.H. Davison, Trustee
55 Iroquois Trail
Portola Valley, CA 94025

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THE VIRGINIA BURROUGHS DAVISON TRUST

Date: 9/24/05

<
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THE VIRGINIA BURROUGHS DAVISON TRUST

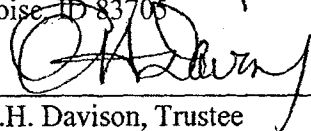
Date: _____

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Date: _____

Karen Knipe Weaver, Trustee
2718 Augusta
Boise, ID 83705

Date: 9/24/05



O.H. Davison, Trustee
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Portola Valley, CA 94025

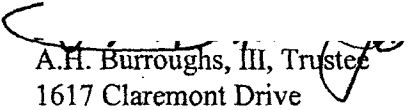
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THE BARBARA BURROUGHS KNIPE TRUST

Date: 9/24/05


A.H. Burroughs, III, Trustee
1617 Claremont Drive
Boise, ID 83702

Date: _____

Karen Knipe Weaver, Trustee
2718 Augusta
Boise, ID 83705

Date: _____

O.H. Davison, Trustee
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Portola Valley, CA 94025

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Date: 9/18/05

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THE BARBARA BURROUGHS KNIPE TRUST

Date: _____

A.H. Burroughs, III, Trustee
1617 Claremont Drive
Boise, ID 83702

Date: _____

Karen Knipe Weaver, Trustee
2718 Augusta
Boise, ID 83705

Date: 9/29/05

O.H. Davison, Trustee
55 Iroquois Trail
Portola Valley, CA 94025

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Gary D. Babbitt, esq.
Hawley Troxell Ennis and Hawley
877 Main Street, Suite 1000
Boise, ID 83701

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A.H. BURROUGHS, III

Date: _____

A.H. Burroughs, III
1617 Claremont Drive
Boise, ID 83702

KAREN KNIPE WEAVER

Date: 9/18/05

Karen Knipe Weaver
2718 Augusta
Boise, ID 83705

O.H. DAVISON

Date: _____

O.H. Davison
55 Iroquois Trail
Portola Valley, CA 94025

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

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Hawley Troxell Ennis and Hawley
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Boise, ID 83701

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Boise, ID 83702

KAREN KNIFE WEAVER

Date: _____

Karen Knife Weaver
2718 Augusta
Boise, ID 83705

O.H. DAVISON

Date: 9/24/05

O.H. Davison
55 Iroquois Trail
Portola Valley, CA 94025

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

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Appendix A

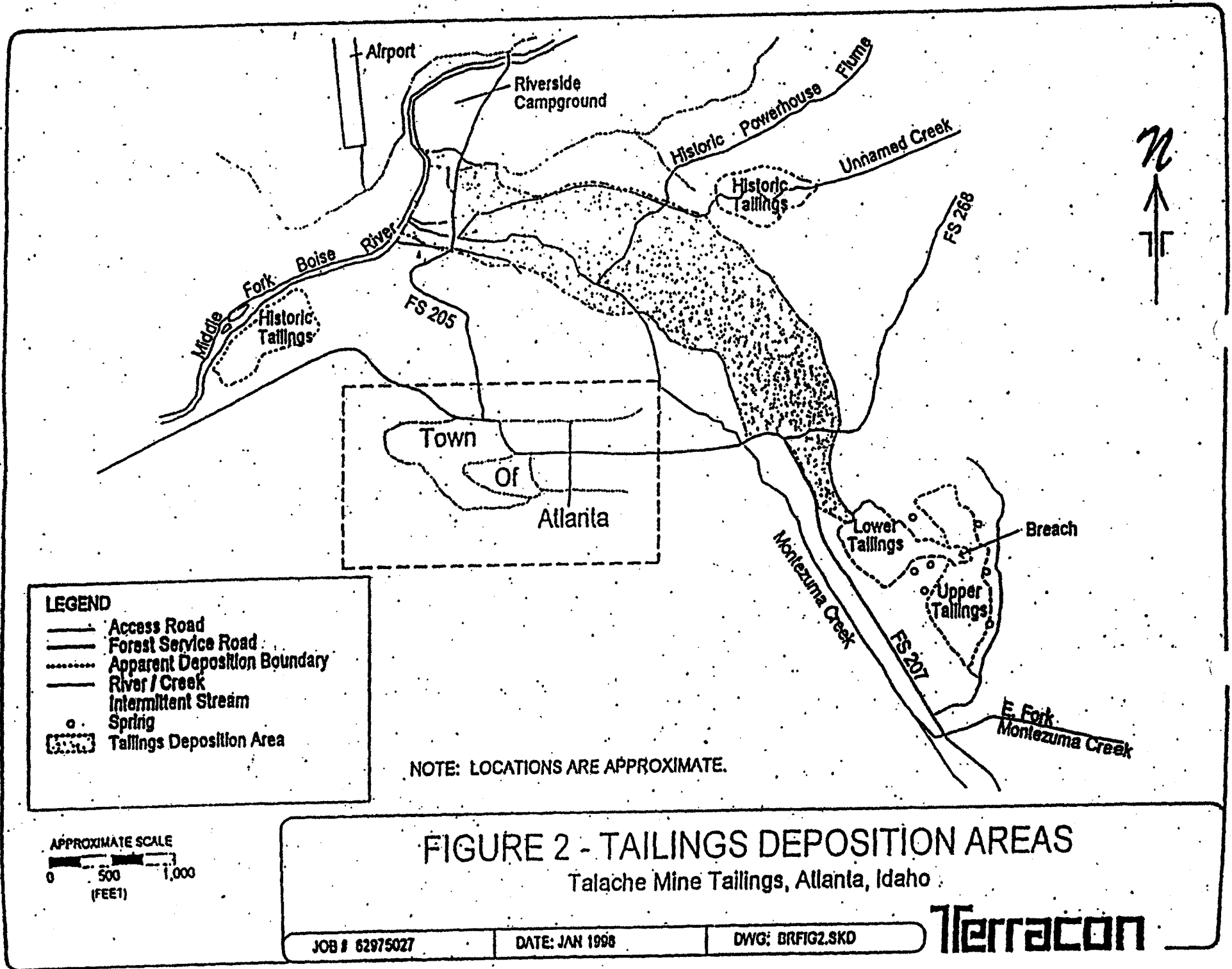


FIGURE 2 - TAILINGS DEPOSITION AREAS

Talache Mine Tailings, Allanta, Idaho

JOB # 62975027

DATE: JAN 1998

DWG: BRFIG2.SKD

Terracon

Appendix B

I. Outfall Location (continued from page 1 of Form 2C)

Outfall	Latitude			Longitude			Receiving Water	SRK MD Sample Site*
	Deg	Min	Sec	Deg	Min	Sec		
001	43	47	22.7	115	6	33.5	Montezuma Creek	MD-1P
002	43	47	12.4	115	6	26.2	Montezuma Creek	MD-2
003	43	46	18.9	115	7	24.3	Unnamed Tributary to Decker Creek	MD-4
004	43	46	9.2	115	8	15.2	Decker Creek	MD-5
005	43	46	32.6	115	7	41.2	Unnamed Tributary to Decker Creek	MD-6
006	43	47	19.4	115	7	41.8	Quartz Gulch	MD-7
007	43	46	49.7	115	7	29.1	Unnamed Tributary to Quartz Gulch	MD-8
008	43	46	13.4	115	7	23.3	Unnamed Tributary to Decker Creek	MD-11
009	43	46	33	115	7	41.7	Unnamed Tributary to Decker Creek	MD-13
010	43	46	51	115	7	27.8	Unnamed Tributary to Quartz Gulch	MD-16
011	43	46	58.3	115	7	21.5	Quartz Gulch	MD-18
012	43	47	20.9	115	6	55.2	Unnamed Tributary to Montezuma Creek	MD-19
013	43	47	2.8	115	4	14.7	Unnamed Tributary to Quartz Gulch	MD-20
014	43	47	27.9	115	7	47	Quartz Gulch	MD-21
015	43	46	49.7	115	7	29.1	Unnamed Tributary to Quartz Gulch	MD-22
016	43	47	17.4	115	7	0.1	Unnamed Tributary to Montezuma Creek	MD-25
017	43	47	14.8	115	7	37.8	Quartz Gulch	MD-26
018	43	46	55.4	115	7	19.6	Quartz Gulch	MD-27
019	43	47	4.7	115	7	29.4	Quartz Gulch	MD-28
020	43	47	22.3	115	6	44.1	Unnamed Tributary to Montezuma Creek	MD-29
021	43	46	9.9	115	8	6.7	Unnamed Tributary to Decker Creek	MD-31
022	43	47	7.9	115	7	42.7	Quartz Gulch	MD-32
023	43	47	25.4	115	6	41.5	Unnamed Tributary to Montezuma Creek	MD-40
024	43	47	16.4	115	7	26.5	Unnamed Tributary to Quartz Gulch	MD-41

**See following descriptions of the SRK mine drainage sample sites.

I. Outfall Location - SRK Mine Drainage Sample Site Descriptions

MD-1P (Outfall 001)

Sample site MD-1P (Pond) is located at the settling pond at the 900 Level mine, which is 1.0 mile southwest along USFS Road 207 following Montezuma Creek on the east side of Atlanta, and then west on Road 207AE. Originally sample site MD-1P was located at the inflow to the settling pond. There is a flume which feeds the drainage into the pond. Flow measurements and water quality samples were taken from the flume as it entered the pond. For the October 2004 sampling event, the sampling site was located at the outfall of the pond as it enters Montezuma Creek.

MD-2 (Outfall 002)

Sample site MD-2 is located at the adit to the 600 Level mine, 1.38 miles southwest on USFS Road 207 and 0.1 miles around the switchback on USFS Road 207. The adit is south of the road and has several boards and timbers around the entrance. The sample site is located approximately 18 feet from the adit entrance. The water flow out of the adit is very shallow.

MD-5 (Outfall 004)

MD-5 is located on USFS Road 207, approximately 0.32 miles from the intersection with Road 289. Timbers, metal pipes, and stakes are present at the site. Flow originates at the same elevation as the road. Sample site is located to the southwest of the origin at the break in slope.

MD-6 (Outfall 005)

MD-6 is located on USFS Road 289X5 and contributes to the Decker Creek drainage. MD-6 is located on a waste rock storage area that is approximately 30 yards wide and 60 to 70 yards in length. An iridescent sheen is present on the water surface and iron oxides are present on rock surfaces. Water disappears at a break in slope approximately 15 yards away from the point of origin.

MD-7 (Outfall 006)

MD-7 is located 0.7 miles south of Atlanta on USFS Road 209 on the west side of the road. Water originates by a collapsed adit and flows towards Quartz Gulch.

MD-8 (Outfall 007)

MD-8 is located 1.4 miles south on USFS Road 209 and then 0.15 miles west on Road 208. Water originates by a collapsed adit. Flow measurements and water quality samples were collected approximately 40 yards downstream of the adit as there was not enough flow to sample at its origin. The flow at the sampling location consists of a channel of a spring or snow melt source that originates upgradient and passes over and cuts through waste rock from the MD-8 adit. There is only a negligible amount of standing water that can be positively identified as emanating from the adit itself.

MD-11 (Outfall 008)

MD-11 is located upstream of USFS Road 207, about 1.5 miles east of the intersection with USFS Road 289. The site is downslope of a waste rock facility and flows towards the MD-4 drainage. Clay is abundant at the site. There are possibly two adits at this location. Waste rock and mining remnants were found down slope of this site. The flow at this site appears to be a toe seep.

MD-13 (Outfall 009)

MD-13 is located on USFS Road 289X5A, about 0.95 miles northeast past the turnoff from Road 289. MD-13 originates from a depression in the hillside upslope of the MD-13 waste rock dump and disappears again near the toe of the MD-6 waste rock dump.

MD-16 (Outfall 010)

MD-16 is located 0.2 miles west on USFS Road 208 from the intersection with USFS Road 209. The site appears to be the location of a collapsed portal with water seeping out at its entrance. The adit entrance is at the same level as an old road, and waste rock is possibly located over the edge of the road. Water trickles from the adit across the road. Flow measurements and grab samples are collected at this location. In both of the October sampling events, no measurable flow was observed. A piece of sheet metal was present in the pooled water at the adit entrance.

MD-18 (Outfall 011)

MD-18 is located 1.25 miles south of Atlanta on USFS Road 209. The mine drainage flows from the toe of a waste rock dump accumulated beneath a collapsed mine adit in Quartz Gulch. In May 2004, the flow was dispersed and could not be measured.

MD-19 (Outfall 012)

MD-19 is accessed from the northernmost section of USFS Road 208 and is located approximately 0.6 miles west of its junction with USFS Road 297. A large part of the flow visible in this area can be attributed to a spring located upgradient. However, flow was identified emanating from a collapsed adit at this location and a waste rock dump was evident downgradient of the adit. Field measurements and grab samples are collected from the flow emanating from the adit.

MD-20 (Outfall 013)

MD-20 is located 1.17 miles south of Atlanta on USFS Road 209 and then 500 ft above the road on the east side of the road. MD-20 was positively identified as a mine drainage by the presence of ore cart tracks leading away from a subsidence zone, as well as abundant waste rock below the subsidence zone. This may be the location of the historic Jessie Benton adit. There was a considerable quantity of deer feces in and around the flowing water.

MD-21 (Outfall 014)

MD-21 is located 0.2 miles northwest on USFS Road 209A from the turnoff of USFS Road 209. MD-21 can be accessed by walking 200 feet down an old road to the north that branches off of USFS Road 209A. MD-21 is in the drainage flowing directly out of the historic Tahoma West adit. Abundant waste rock is located down slope of this adit. Drainage from MD-21 flows into two pools before entering Quartz Gulch. Rust-colored stains were noted in this drainage. Flow was measured below the large flat area below the adit where all of the flow is contained in one channel.

MD-22 (Outfall 015)

MD-22 is accessed from USFS Road 208 and is located along a drainage that intersects USFS Road 208 approximately 0.1 miles west of the junction with USFS Road 209. This was a new mine drainage site located in May 2004. At this location, water originates from a cut in slope that is likely a collapsed adit. Waste rock is located immediately downstream of the emerging water. During both the May 2004 and October 2004 sampling events there was not enough flow to collect a sample and the flow disappeared at the top of the waste rock dump. However, because the potential for flow in this location has not been fully determined it has been included in the list of Outfalls.

MD-25 (Outfall 016)

MD-25 is located 0.2 miles to the east of the most eastern extent of USFS Road 208X3. MD-25 was discovered during the May 2004 sampling event. In this location, flow emanates from an adit before coming in contact with the waste rock dump downslope of the adit.

MD-26 (Outfall 017)

MD-26 is located 200 feet northwest on USFS Road 209X from the intersection with USFS Road 209. MD-26 is 100 feet southwest, above, the road. This was a new mine drainage site located in May 2004. In this location, flow emanates from an old adit before the water drains through the waste rock dump.

MD-27 (Outfall 018)

MD-27 is located on USFS Road 209 0.35 miles south of the intersection with USFS Road 209D. MD-27 is east, below, the road and west of Quartz Creek. This is a new mine drainage site located in May 2004. The sample site was located inside a wooden structure. At the sample site the flow was very low; however, 20 feet downslope of the adit the flow dramatically increased. Comparable field parameters measured at the source and downslope of the adit suggests that all of the flow was originating from the adit. The flow rate was measured about 30 feet downstream of the adit. No flow was observed during October 2004.

MD-28 (Outfall 019)

MD-28 is located 0.15 miles south on USFS Road 209 from the intersection with USFS Road 209D. MD-28 is south of the road and north of Quartz Creek. This was a new mine drainage located in May 2004. The sample location was drainage from an adit. There was neither flow nor standing water at this location in October 2003 and October 2004.

MD-29 (Outfall 020)

MD-29 is located on USFS Road 208. This was a new mine drainage located in May 2004. The flow emerged downslope of the toe of a waste rock dump; however, the small drainage above the adit and waste rock dump was upslope of the mine. All of the water must have originated from the mine workings.

MD-31 (Outfall 021)

Site MD-31 can be reached by traveling approximately 2.8 miles south on USFS Road 289 (Yuba River Road) from the intersection with USFS Road 268 to the intersection with USFS Road 207, and 0.6 miles east on USFS Road 207. This was a new mine drainage located in May 2004. The site is past the remains of an old log structure on the north side of the road. MD-31 is the adit of the historic Idaho Tunnel. This location is marked by a large tree collapsed across the adit. The main drainage and flow emerging from the adit crosses over a wide area of waste rock that fills the drainage. The flow was shallowly spread across a wide area and was not recorded at this location.

MD-32 (Outfall 022)

MD-32 is located approximately 0.6 miles south on USFS Road 209 (Quartz Creek Road) from the Atlanta Townsite. This was a new mine drainage located in May 2004. This mine drainage is located on the south bank of Quartz Gulch immediately above the historic mill site. Flow is visible seeping out of a depression that appears to be a collapsed adit. The flow continues downslope towards the old mill site and enters Quartz Gulch. At the same elevation as the source of the flow and slightly adjacent to the adit is a waste rock pile that appears to be associated with the adit.

MD-40 (Outfall 023)

MD-40 is located 1,000 feet downslope and southwest of SP-10ds on USFS Road 208 and upslope of the 900 Level. This mine drainage was located in May 2004. The flow from an adit was a seep that was on the surface for 20 feet and then disappears into rocks. The flow in this location is dispersed and could not be measured.

MD-41 (Outfall 024)

MD-41 is located 400 feet downslope and east of USFS Road 208A. This was a new mine drainage located in May 2004. There are extensive waste rock dumps and workings above and below the site. The seep is from an adit; the water flows to the south around the waste rock dump and disappears into the soil. There is no seepage from the toe of the waste rock dump below the adit. The flow from the adit was too low to measure.